

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

	Complaint no. : First date of hearing: Date of decision :	
Mr. Virinder Singh Dadhwal Mrs.Deepa Dadhwal RR/o: VPO Chalet Tehsil Ghanari 177204.	Dist UNA, HP-	Complainants
V	ersus	
M/s Vatika Seven Elements Pvt. Ltc Office: Flat no. 621-A, 6 th floor, I Nehru Place, New Delhi-110019.		Respondent
CORAM: Shri Ashok Sangwan Shri Sanjeev Kumar Arora		Member Member
APPEARANCE: Sh. Sukhbir Yadav (Advocate) S/Sh Venket Rao & Pankaj Chandol	a (Advocates)	Complainants Respondent

ORDER

- 1. The present complaint dated 12.04.2022 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.
- A. Unit and project related details



2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details	
1.	Name and location of the project	"Vatika Seven Element" at sector 89A, Gurgaon, Haryana.	
2.	Nature of the project	Group housing	
3.	Project area	14.30 acres	
4.	DTCP license no.	41 of 2013 dated 06.06.2013 valid upto 05.06.2017	
5.	Name of licensee	M/s Strong Infrabuild Pvt. Ltd. & others	
6.	RERA Registered/ not registered		
7.	Unit no.	801, building A4 (page 39 of complaint)	
8.	Unit area admeasuring	2100 sq. ft.	
	2	(Page no. 39 of complaint)	
9.	Date of allotment	19.12.2013 (annexure P4, page 39 of complaint)	
10.	Date of builder buyer agreement	15.12.2014 (page 47 of complaint)	
11.	Possession clause	13. Schedule for possession of the said apartment. The developer based on its present plans and estimated and subject to all just exceptions, contemplates to complete construction of this said building/said apartment within a period of 48 month from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses 14 to 17 & 37 or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in annexure -I or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to	

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		abide by any of the terms or conditions of this agreement (Emphasised supplied), page 49 of complaint
12.	Due date of possession	15.12.2018
13.	Total sale consideration	Rs. 1,64,75,741/- (annexure R2 reply)
14.	Amount paid by the complainants	Rs. 1,41,31,048/- (annexure R2 of reply)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
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B. Facts of the complaint

- 3. The complainants have made the following submissions in the complaint:
 - I. That believing the representations and promises made by the respondent, the complainants agreed to purchase an apartment in the project detailed above for a total consideration of Rs. 1,64,75,741/- and on 03.04.2013 and paid the booking amount of Rs. 8,00,000/- towards purchase of the unit under construction linked payment plan. They paid Rs. 12,83,750/against the demand raised by it. Thereafter, they were allotted unit no. 801, tower A4, vide allotment letter dated 19.12.2013.
 - II. That on 30.12.2013, the complainants sent a grievance email to the respondent alleging a levy of interest of Rs. 1,53,58/- and explained that first-time demand was raised on 23rd July, asking for payment to be made on 19th July. Thereafter, they further stated that payment was made 15 days of notice, 6herefore, request was made for the withdrawal of interest from the statement of account. On 31.12.2013, the complainants paid Rs. 2,19,342/- and thereafter, continuously paid the demands as and when raised by it.
 - III. That on 15.12.2014, after a long follow-up, a pre-printed, arbitrary, unilateral, and ex-facie flat buyer agreement was executed between the parties. As per clause no. 13 of the buyers' agreement, the respondent has to give possession of the flat "within a period of 48 months from the date Page 3 of 17



of execution of this agreement", therefore, the due date of possession was fixed on 15.12.2018.

- IV. That on 04.03.2019, the complainants send an email to the respondent alleging that "corner and park facing" PLC was not applicable to them. Thereafter, on 04.04.2019, they sent a grievance email to it on the issue of PLC and visited its office many times. After a long chase, on 07.08.2019, it replied that park facing PLC removal was in process and same would reflected in their account latest by next weekend.
- V. That on again 18.11.2021, the complainants sent a grievance email to the respondent and informed that they visited the site 01.09.2021 and raised the issue of the construction update which was not true as claimed the respondent. The complainants continued to pay the remaining installments as per the payment schedule of the buyer's agreement and have already paid more than 90% of the amount i.e. Rs. 1,41,31,048/- out of the total cost of the apartment, along with interest and other allied charges of the actual purchase price, but when they observed that there has been no progress in the construction of the flat for a long time, they raised their grievances to the respondent. It is submitted that they were always ready and willing to pay the remaining installments, provided that there was some progress in the construction of the flat.
- VI. That on 18.11.2021, the complainants received a statement of account against unit no. 801, tower-A4, Sector-89A, area-2100 sq. ft. in the project Seven Elements, which shows that the total sale consideration is Rs.1,65,50,446/- and other charges are Rs. 17,41,241/- and they had paid Rs. 1,41,31,048- till 18.07.2019. The main grievance of the complainants is that despite they paid more than 90% of the actual amount for the said flat and were ready and willing to pay the remaining amount due (if any), the respondent has failed to deliver the possession of the flat.



- VII. That the complainants had booked the unit with the intention that after purchase, their family would live in the flat. It was promised by the respondent at the time of receiving the payment that the possession of the fully constructed flat along with basement and surface parking, landscaped lawns, club/ pool, EWS, etc. as shown in the brochure at the time of sale, would be handed over to them in 48 months from date of execution of buyer's agreement i.e., 15.10.2018. It is pertinent to mention here that construction work on project did not progress for long and there is no possibility to get possession of the flat in near future.
- VIII. That the complainants are suffering from grave mental agony and financial hardship due to the illegal, unethical and unprofessional acts of the respondent. It is du to the deficient service and unfair trade practice that the complainants are being cheated of their hard-earned money invested in the unit, for which they have paid a huge amount.
 - IX. That the complainants are no longer interested in the project and seek refund of their hard-earned money with interest as per RERA rate of interest
- C. Relief sought by the complainants:
- 4. The complainants have sought following relief(s).
 - a. Direct the respondent to refund the amount paid by the complainants along with interest from the date of making payment till the realization of money.
- 5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.
- D. Reply by the respondent
- 6. The respondent has contested the complaint on the following grounds.

- a. That the complainants failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. They are raising false, frivolous, misleading and baseless allegations against the Respondent with intent to make unlawful gains.
- b. That the complainants have not approached the authority with clean hands and have suppressed relevant facts. It is submitted that the complaint is devoid of merit and the same be dismissed with cost.
- c. At the outset, the complainants learnt about the project launched by the Respondent titled as 'Seven Elements' *(hereinafter referred to as the said 'Group housing colony')* situated at Sector 89-A, Gurgaon and approached it repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
- d. Thereafter, after having keen interest in the project constructed by the respondent the complainants booked a unit on 03.04.2013 and paid an amount of Rs. 8,00,000/- for further registration. It is pertinent to note, that the complainants were aware of each and every term of the aforesaid application and only after being fully satisfied, agreed to sign without any protest any demur.
- e. The respondent vide allotment letter dated 08.10.2013, allotted unit bearing no. 802, tower A4 admeasuring to 2100 sq.ft. in the aforesaid project.
- f. That on 15.12.2014, a builder buyer agreement was executed between the parties for the aforesaid unit in the instant project being developed by the respondent for a total sale price of Rs. 1,64,75,741/-. It is pertinent to bring into the knowledge of the authority that as per the



agreement so signed and acknowledged the respondent provided and estimated time period 48 months for completing the construction of the project and the same was subject to various hindrances in midway of construction purely beyond the control of the respondent.

- g. It is to note, that the complainants evidently mentioned that the buyers' agreement was signed and executed on 15.12.2014 and as per the same it was bound to handover the possession of the unit subject to any delay beyond the control of the respondent by 15.12.2018. Being, aware of the payment schedule and the fact that timely payment was essence for completion of the project. The complainants have failed to make the requisite payment of the instalment as and when demanded by it in accordance with the paymer.t schedule.
- h. That subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in the projects in its licensed land comprised of the township owing to take over of land by the government for making Highway. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted/group housing/commercial/institutional in the entire township. That was further compounded with the non-removal or shifting of the defunct high-tension lines passing that land, which also contributed to the inevitable change in the layout plans.
- Apart from the above, the progress of the construction of the project was also effected due to various other unforeseen circumstances such as:
 - a Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.



- b. The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 makes the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.
- c. The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
- d. Further, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 mtrs. was uplifted. Before start of the acquisition and construction process, the respondent had already laid down the services according to the earlier sector road level. However, due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to the respondent.
- e. Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans
- 7. That the respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the buyer's agreement. It is pertinent to apprise to the authority that the development work of the said project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 stretching its adverse effect in various industrial, construction, business area even in 2019. It has to undergo huge obstacle due to effect of demonetization and implementation of the GST. In past few years the construction activities have also been hit by repeated bans by the courts/tribunals/authorities to curb pollution in Delhi-NCR region. In the recent past the Environmental pollution (Prevention and Control) Authority, NCR vide its notification beating no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours



from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

- That the current covid-19 pandemic resulted in serious challenge to the 8. project with no available labour, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no, 40-3/2020-DM-1(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25,2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date, the same continued in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial and construction activities. In pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.
- 9. That due to ban levied by the competent authorities, the migrant labour was forced to return to their native towns/states/villages creating an acute shortage of labours in the NCR region. Despite, after lifting of ban by the court the construction activities could not resume at full throttle due to such acute shortage.



- 10. Despite after such obstacles in the construction activities and before the normalcy could resume the entire nation was hit by the worldwide Covid-19 pandemic. Therefore, the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay.
- 11. That the current covid-19 pandemic resulted in serious challenge to the project with no available labours and contractors etc for the construction of the project. On 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM-I(A) recognised that entire nation was threatened with Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on 25.03 2020.
- 12. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. They have not approached the authority with clean hands. Hence, the complaint deserves to be dismissed with heavy costs. and the complainants are guilty of placing untrue facts and are attempting to hide their intention.
- 13. That the complainants, suppressed the above stated facts and raised under reply upon baseless, vague, wrong grounds and mislead this authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this authority and in the interest of justice.
- 14. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

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E. Jurisdiction of the authority



15. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

16. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

17. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

18. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



19. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" 2021-2022(1) RCR(C), 357:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

- 20. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
- F. Findings on the objections raised by the respondent. F.I Objection w.r.t. force majeure.
- 21. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as, shortage of labour, various orders passed by NGT, weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of



merit. The flat buyer's agreement was executed between the parties on 15.12 2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 15.12.2018. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on the record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent-builder. Though some allottees may be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

22. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 observed as under:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 201^o. Opportunities were given to the Contractor to cure the same repeatedly. Des_i te the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself.

23. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 15.12.2018 and is Page 13 of 17



claiming benefit of lockdown which came into effect on 23.03.2020 whereas, the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

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G. Findings on the relief sought by the complainants.

G. I Direct the respondent to refund the paid amount along with interest.

- 24. The complainants have submitted that they booked a unit in the respondent's project namely "Vatika Seven Element". An allotment letter was issued in favour of the complainants on 19.12.2013 and allotted a unit bearing no. 801, A4 admeasuring 2100 sq.ft. for a total sale consideration of Rs. 1,64,75,741/- against which they paid an amount of Rs. 1,41,31,048/-. Thereafter, on 15.12.2014 a builder buyers' agreement was executed between the parties, as per clause 13 of the said agreement the due date of handing over of possession was 15.12.2018.
- 25. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on its failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
- 26. The due date of possession as per agreement for sale as mentioned in the table above is 15.12.2018 and there is delay of 3 years 3 months 29 days on



the date of filing of the complaint. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019*, decided on 11.01.2021

"" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project......"

27. Further in the judgement of the Hon'ble Supreme Court of India in the cases

of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. It was observed:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed



- 28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
- 29. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
- 30. The authority hereby directs the promoter to return to the complainants the amount received by him i.e., Rs. 1,41,31,048/- with interest at the rate of 10.60% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
- F. Directions of the authority
- 31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):



Member

- The respondent is directed to refund the entire amount of Rs. i. 1,41,31,048/- paid by the complainant along with prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development Rules, 2017) from the date of each payment till the actual date of realization of the amount.
- A period of 90 days is given to the respondent to comply with the ii. directions given in this order and failing which legal consequences would follow.
- 32. Complaint stands disposed of.
- 33. File be consigned to registry.

and (Sanjeev Kumar Arora) (Ashok Sangwan) Member Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.02.2023